92-1006

No. _____

Supreme Court, U.S.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

ROBERT D. SPRAGUE, *et al.*,
Petitioners,

v.

GENERAL MOTORS CORPORATION,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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December 1992

QUESTION PRESENTED

Is there a constitutional right to a jury trial on federal common law and statutory breach of contract claims under ERISA?

LIST OF PARTIES

The petitioners are Robert D. Sprague and the other 112 plaintiffs in the district court listed in the Appendix at 39a.

The respondent is General Motors Corporation.

The United States District Court for the Eastern District of Michigan, the Honorable John Feikens presiding, was a respondent to the petition for mandamus in the court of the appeals, but did not appear separately in the proceeding.

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IN THE

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OCTOBER TERM, 1992

No. _____

ROBERT D. SPRAGUE, *et al.*,

Petitioners,

v.

GENERAL MOTORS CORPORATION,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners Robert D. Sprague, *et al.*, respectfully pray that a writ of certiorari issue to review the Order of the United States Court of Appeals for the Sixth Circuit, entered in the above-entitled proceeding on November 16, 1992, denying the petition for mandamus to reinstate the jury trial demand and to conduct the trial in this case as a jury matter.

OPINIONS BELOW

The unpublished memorandum of the Court of Appeals for the Sixth Circuit, entered November 16, 1992, is reprinted in the Appendix at 1a. The Opinion and Order of the United States District Court for the Eastern District of Michigan (Feikens, J.) was entered October 23, 1992 and is reprinted in the Appendix at 3a. A previous Opinion and Order of the district court, entered July 29, 1991, is reported at 768 F. Supp. 605 and is reprinted in the Appendix at 22a.

JURISDICTION

The Order of the Court of Appeals for the Sixth Circuit denying the petition for mandamus was entered on November 16, 1992. The jurisdiction of this Court to review the Order of the Sixth Circuit is invoked under 28 U.S.C. § 1254(1). *See Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 470 (1962).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Seventh Amendment to the United States Constitution reads:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Section 502 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132, reads in part:

> (a) **Persons empowered to bring a civil action**
> A civil action may be brought --
> (1) by a participant or beneficiary --
> ***
> (b) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;...

STATEMENT OF THE CASE

This case, perhaps the largest ERISA class action ever, presents the important question of whether breach of contract claims for lifetime health care benefits are triable to a jury. The contract claims at issue, based on early retirement agreements entered into between respondent General Motors Corporation ("GM") and more than 40,000 GM salaried early retirees, arise out of the federal common law of ERISA and the right to recover plan benefits under § 502 of ERISA.

In this action, brought on behalf of more than 84,000 GM salaried retirees or their surviving spouses, petitioners alleged that GM had promised lifetime basic health care benefits at no cost to the retiree and surviving spouse, and unreduced major medical benefits. Petitioners challenged massive changes by GM in its health care program for salaried retirees beginning in 1988. The changes include the imposition of programwide deductibles and copayments, and elimination of vision, hearing

aid, allergy treatment, and chiropractic care coverages. The complaint charged a violation of the terms of GM's salaried health care plan (Count II), breach of contract under federal common law (Count IV), a claim of equitable or promissory estoppel, and violation of ERISA's fiduciary, disclosure and reporting requirements.

On July 29, 1991, the district court entered an order on the parties' cross-motions for summary judgment. *Sprague v. General Motors Corp.*, 768 F. Supp. 605 (E.D. Mich. 1991) (A. 22a). The district court granted GM's summary judgment motion as to "general" retirees on Count II, concluding that GM had reserved the right to modify the salaried health care plan after retirement. 768 F. Supp. at 611 (A. 34a). The court also dismissed plaintiffs' fiduciary claims. *Id.* at 612 (A. 38a).

As to the more than 40,000 salaried early retirees, the court denied GM's summary judgment motion on Counts II and IV, *id.* at 612 (A. 36a-37a):

> Nevertheless, I do not foreclose the possibility that GM bilaterally contracted to provide vested benefits to early retirees. I make this finding because it appears that some early retirement agreements contain GM's promise to furnish early retirees with a particular level of health care coverage in exchange for the early retiree's promise to, *inter alia*, release GM from liability for certain causes of action. These early retirement agreements may be enforceable under ERISA as independent bilateral contracts or as modifications of GM's health care benefit plan.

At the same time, the court denied plaintiffs' cross-motion for early retirees on the contract claim, finding that there existed genuine issues of fact as to "(1) which 'early retirement agreements' constitute bilateral contracts; (2) the terms of those contracts; and (3) whether the 1988 changes constitute a breach of those contracts." *Id.* (A. 37a). The court highlighted the salaried early retirees' contract claims as follows, *id.* at 609 (A. 29a):

> Beginning in 1974, GM instituted a program of Special Early Retirement with enhanced benefits for pension eligibles as an inducement for their departure in connection with plant closing, workforce downsizing, or other action initiated by GM. Over the years GM also offered other types of early retirement packages.
>
> Many early retirees signed a "statement of acceptance," evidencing their agreement to accept GM's offer of early retirement. In some of these statements the early retiree affirms that he/she has "reviewed the benefits applicable" to him/her and "accepts them." In exchange, the retiree promises to release GM from liability for certain causes of action potentially connected with the early departure, including claims of age discrimination. Prior to signing these forms, many early retirees were given benefit summaries describing the health care benefits which they would receive during retirement.

The case was certified for interlocutory appeal, *id.* at 607 (A. 23a). Following the denial of the petitions for interlocutory appeal, the district court on November 4, 1991 certified the class of more than 40,000 salaried early retirees and divided the class into subclasses based on the type of documentation (such as the "statements of acceptance") received at retirement.

In April and June, 1992, the parties again filed cross-motions for summary judgment. On August 11, 1992, the district court orally denied the summary judgment motions without prejudice and set the case for trial as to liability only on the contract claims of two subclasses of early retirees. Adjudication of the estoppel and ERISA reporting and disclosure claims was deferred.

The principal contract claim, which seeks to enforce the early retirement agreements apart from the terms of GM's regular health care plan, is the claim in Count IV arising under the federal common law of ERISA, *id.* at 607 (A. 24a); *see also id.* at 612 (A. 36a-37a) ("early retirement agreements may be enforceable under ERISA as independent bilateral contracts..."). The alternative contract claim (Count II) is a claim under § 502 of ERISA to enforce the early retirement agreements as "modifications of GM's health care benefit plan." *Id.* at 612 (A. 37a).

After the case was set for trial, GM in September 1992 moved to strike petitioners' jury demand on file since the case was instituted in August 1989. In an Opinion and Order entered October 23, 1992 (A. 3a), the district court struck the jury demand and rejected petitioners' arguments that the Seventh Amendment entitled them to a jury trial on both their federal common law and statutory contract claims. The district court

determined that all ERISA actions are equitable in nature, and that it would be disruptive to the ERISA statutory scheme to allow a jury trial in this case (A. 16a, 19a). The district court also ruled that the remedies sought by petitioners were equitable in nature, relying principally on the decision in *Bair v. General Motors Corp.*, 895 F.2d 1094 (6th Cir. 1990) (A. 10a). The court declared the multimillion dollar damages claims to be "restitutionary" rather than compensatory, and "incidental" to the injunctive relief sought (A. 14a, 20a).

Petitioners immediately filed a petition for writ of mandamus in the United States Court of Appeals for the Sixth Circuit. In an Order entered November 16, 1992, the court of appeals denied the petition without opinion (A. 1a).

REASONS FOR GRANTING THE WRIT

THE CONSTITUTIONAL RIGHT TO A JURY TRIAL ON ERISA CONTRACT CLAIMS IS AN IMPORTANT ISSUE ON WHICH THE COURTS OF APPEALS ARE DIVIDED.

This case presents an issue of national importance because of both the fundamental constitutional right involved and the subject matter of the dispute. Health care is one of the most pressing issues of the day and ERISA is the vehicle by which disputes regarding employer-provided health care benefits are to be resolved in the courts. This case is the paradigm of the conflict among the courts of appeals and district courts as to whether ERISA disputes over contractually defined benefits are to be resolved by a court sitting alone or by a jury as factfinder.

Recent decisions by this Court concerning jury trials and concerning ERISA strongly signal that the conflict should be resolved in favor of the right to a jury trial. A writ of certiorari should be granted to settle this important question.

The Seventh Circuit has upheld the grant of a jury trial in a breach of contract action to recover lifetime health care benefits under ERISA and the Labor Management Relations Act. *Senn v. United Dominion Industries, Inc.*, 951 F.2d 806, 814 (7th Cir.), *petition for cert. filed*, 60 U.S.L.W. 3112, (U.S. Aug. 18, 1992) (No. 92-216). Other courts of appeals, including the Sixth Circuit in the decision relied upon by the district court here, *Bair v. General Motors Corp.*, 895 F.2d 1094 (6th Cir. 1990), have denied jury trials in ERISA cases in various contexts.[1] In recent years, district courts have split widely over the right to a jury trial on ERISA claims, with the

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[1] In addition to *Bair*, the decisions include: *Kirk v. Provident Life and Acc. Ins. Co.*, 942 F.2d 504 (8th Cir. 1991); *Blake v. Unionmutual Stock Life Ins. Co.*, 906 F.2d 1525 (11th Cir. 1990); *Cox v. Keystone Carbon Co.*, 894 F.2d 647 (3d Cir.), *cert. denied*, 111 S. Ct. 47 (1990); *Pane v. RCA Corp.*, 868 F.2d 631 (3d Cir. 1989); *Daniel v. Eaton Corp.*, 839 F.2d 263 (6th Cir.), *cert. denied*, 488 U.S. 826 (1988); *Nevil v. Shell Oil Co.*, 835 F.2d 209 (9th Cir. 1987); *Chilton v. Savannah Foods & Industries, Inc.*, 814 F.2d 620 (11th Cir. 1987); *Crews v. Central States, Southeast and Southwest Areas Pension Fund*, 788 F.2d 332 (6th Cir. 1986); *Turner v. CF & I Steel Corp.*, 770 F.2d 43 (3d Cir. 1985), *cert. denied*, 474 U.S. 1058 (1986); *Berry v. Ciba-Geigy Corp.*, 761 F.2d 1003 (4th Cir. 1985); *Katsaros v. Cody*, 774 F.2d 270 (2d Cir.), *cert. denied*, 469 U.S. 1072 (1984); *Blau v. Del Monte Corp.*, 748 F.2d 1348 (9th Cir. 1984), *cert. denied*, 474 U.S. 865 (1985); *In re Vorpahl*, 695 F.2d 318 (8th Cir. 1982); *Calamia v. Spivey*, 632 F.2d 1235 (5th Cir. 1980); *Wardle v. Central States Pension Fund*, 627 F.2d 820 (7th Cir. 1980), *cert. denied*, 449 U.S. 1112 (1981).

majority of the district courts affirming the right.[2] This conflict potentially affects all ERISA benefits litigation. Because of the breadth of the conflict, because of the important substantive rights involved, and because of the importance attached to the jury as factfinder in our system of jurisprudence, *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935), a writ of certiorari should be granted to resolve the conflict.

This Court recently has reiterated that the reach of the Seventh Amendment extends to all suits in which "legal" rights are to be determined, as opposed to those involving equitable

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[2] Cases granting the right to a jury trial include: *McDonald v. Artcraft Electric Supply Co.*, 774 F. Supp. 29 (D.D.C. 1991); *International Union, United Automobile, Aerospace and Agricultural Implement Workers v. Midland Steel Products Co.*, 771 F. Supp. 860 (N.D. Ohio 1991); *Brasher v. Prudential Insurance Co.*, 771 F. Supp. 280 (W.D. Ark. 1991); *Resnick v. Resnick*, 763 F. Supp. 760 (S.D.N.Y. 1991); *Steeples v. Time Insurance Co.*, 139 F.R.D. 688 (N.D. Okl. 1991); *Blue Cross and Blue Shield of Alabama v. Lewis*, 753 F. Supp. 345 (N.D. Ala. 1990); *Weber v. Jacobs Manufacturing Co.*, 751 F. Supp. 21 (D. Conn. 1990); *Rhodes v. Piggly Wiggly Alabama Distributing Co., Inc.*, 741 F. Supp. 1542 (N.D. Ala. 1990); *Vicinanzo v. Brunschwig & Fils, Inc.*, 739 F. Supp. 882 (S.D.N.Y. 1990); *Gangitano v. NN Investors Life Insurance Co.*, 733 F. Supp. 342 (S.D. Fla. 1990); *Puz v. Bessemer Cement Co.*, 700 F. Supp. 267 (W.D. Pa. 1988); *Smith v. ABS Industries, Inc.*, 653 F. Supp. 94 (N.D. Ohio 1986); *Bower v. Bunker Hill Co.*, 114 F.R.D. 587 (E.D. Wash. 1986).

Cases denying the right to a jury trial include: *Pegg v. General Motors Corp.*, 793 F. Supp. 284 (D. Kan. 1992); *East v. Long*, 785 F. Supp. 941 (N.D. Ala. 1992); *Miner v. Community Mut. Ins. Co.*, 778 F. Supp. 402 (S.D. Ohio 1991); *Bass v. Prudential Insurance Co.*, 764 F. Supp. 1436 (D. Kan. 1991); *In re Emhart Corp.*, 706 F. Supp. 153 (D. Conn. 1988).

claims and remedies alone, and to include causes of action created by Congress. *Teamsters Local 391 v. Terry*, 494 U.S. 558, 564-65 (1990). To determine whether a particular action will resolve legal rights, the Court engages in a two-pronged analysis. First, the Court examines the nature of the issues involved by comparing the action to actions brought in the courts of England prior to the merger of law and equity. Second, the Court examines the remedy sought and determines whether it is legal or equitable in nature, *id.* at 565.

With regard to the first prong of the constitutional test, the conflict regarding the nature of ERISA benefit claims is reflective of the way the courts have characterized the statute as a whole. Some courts, including the district court here (A. 16a), have assumed that ERISA actions are equitable in nature, despite the fact that Congress made no declaration to that effect such as it has in other statutes. Also, prior to this Court's decision in *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101 (1989), many courts applied an arbitrary and capricious standard of review in cases involving denial of ERISA benefit claims. In denying jury trials under ERISA, courts have relied on the arbitrary and capricious standard as one associated with the equitable law of trusts and "incompatible with a jury trial scheme." *Berry v. Ciba-Geigy Corp.*, 761 F.2d 1003, 1007 (4th Cir. 1985); *see Wardle v. Central States, Southeast and Southwest Areas Pension Fund*, 627 F.2d 820, 830 (7th Cir. 1980), *cert. denied*, 449 U.S. 1112 (1981).

One district court allowing a jury trial to recover ERISA plan benefits has aptly remarked that this Court's decision in *Bruch* "marks a significant turning point in the interpretation of ERISA law." *McDonald v. Artcraft Electric Supply Co.*, 774 F. Supp. 29, 34 (D.D.C. 1991). In *Bruch*, this Court

emphasized that ERISA was enacted "to protect contractually defined benefits" and that "[a]ctions challenging an employer's denial of benefits before enactment of ERISA were governed by principles of contract law." 489 U.S. at 112. The focus on the contractual nature of ERISA benefits and protections was central to the Court's determination that a *de novo*, rather than arbitrary and capricious, standard of review applied to an administrator's interpretation denying plan benefits. *Id.* at 115. The reasoning in *Bruch* thus invites settlement of the dispute over whether ERISA benefit claims are essentially contractual or equitable in nature.

In this case, there are two contract claims. The principal claim is the federal common law contract claim in Count IV, based on the asserted promise of lifetime health care benefits in early retirement agreements, "apart from [GM's] regular plan." *Sprague*, 768 F. Supp. at 612 (A. 37a). The alternative claim in Count II for denial of benefits under § 502(a)(1)(B) of ERISA posits that the early retirement agreements, by promising lifetime benefits, modified GM's regular plan. *Id.* Although the district court earlier had recognized Count IV as a "separate cause [] of action...based on breach on contract...arising under 'ERISA federal common law'," *id.* at 607 (A. 24a), in denying the jury trial the court characterized the federal common law claim as merely a "recapitulation" of the § 502 claim for benefits (A. 18a) and denied the jury trial on the basis that all § 502 claims are equitable in nature. This fusion of claims not only undermines the important directive to the federal courts to develop "a federal common law of rights and obligations under ERISA-regulated plans," *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 56 (1987), but it also ignores the requirement to focus on the individual issue to be tried rather than the overall nature of the action. *Terry*, 494 U.S. at 569. The federal common law

contract claim is a distinct claim with a jurisdictional basis independent of the § 502 claim, *see Northeast Department/ILGWU v. Teamsters Local 229*, 767 F.2d 147, 155 (3d Cir. 1985), so the constitutional right to a jury trial should be preserved on the federal common law contract claim irrespective of whether a jury trial is also required on the § 502 claim.

The second prong of the constitutional analysis, an examination of the remedy sought, is the more important one. *Terry*, 494 U.S. at 565. The lower court's conclusion in this case that only equitable relief is sought is an extreme example of how far some courts have gone to recast the remedies in ERISA actions, largely because of reliance on a reading of ERISA law that has been vitiated by *Bruch*. *See, e.g., Blake v. Unionmutual Stock Life Insurance Co.*, 906 F.2d 1525, 1526 (11th Cir. 1990) (rejecting argument that *Bruch* has affected "the overwhelming precedent...that claims on medical insurance plans issued pursuant to ERISA are equitable in nature"); *Bair*, 895 F.2d at 1097 (rejecting argument that jury trial allowed "merely because issues of contract law are involved").

There could hardly be a more pristine contractual remedy than the one involved in this case. Although there are three remedies sought by members of the petitioner class--an adjudication of contract rights, monetary damages, and injunctive relief--only the first of these is the subject of the upcoming trial in this bifurcated class action. The issues set for trial are simply what the terms of the early retirement agreements are and whether the challenged changes constitute a breach of those contracts. *Sprague*, 768 F. Supp. at 612 (A. 37a). The lower court, by focusing exclusively on the later damages and injunctive relief phases and by ignoring the only issue set for

trial, disregarded both the principle that the nature of the issue to be tried rather than the overall character of the action is determinative, *Terry*, 494 U.S. at 569, as well as this Court's clear statement that the plaintiff not only has the "right to have a jury determine whether the contract has been breached and the extent of the damages, *if any, but also just what the contract is.*" *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 479 (1962).

The denial of a jury trial in this case by reference to the damages and injunctive relief phases also warrants review by this Court. The lower court declared the damages involved to be "restitutionary" rather than compensatory and "incidental" to the injunctive relief sought (A. 14a, 20a).

This Court repeatedly has rejected attempts to relabel money damages as restitutionary in order to avoid the dictates of the Seventh Amendment. *Terry*, 494 U.S. at 570-71; *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 49 n.7 (1989); *Tull v. United States*, 481 U.S. 412, 424-25 (1987). The money damages in this case are ordinary damages for breach of contract, not restitution. The damages sought here are measured by petitioners' loss, not GM's gain, and the damages are sought to place petitioners in as good a position as they would have occupied had GM performed on the contract rather than to place them in the same position as they were before the contract was made. *See* Corbin, A.L., 5 *Corbin on Contracts*, § 996 at 15 (1964).

Contrary to the statement in the lower court's opinion, petitioners do not "seek repayment of premiums" (A. 11a). Because GM is self-insured, *Sprague*, 768 F. Supp. at 608 (A. 26a), no premiums are involved. The damages petitioners seek to recover represent losses for payments made to third parties,

whether for amounts equal to the GM deductibles and copayments, for replacement insurance coverage, or for medical coverages reduced or deleted by GM. No return or disgorgement is involved, since the money losses are not measured by what petitioners paid GM and are trying to get back, but rather by what petitioners paid to health care providers and insurance companies. Since at least two of the three types of damages (replacement insurance premiums and payments for medical coverages removed by GM) involve losses to petitioners greater than GM's savings, the restitution analogy is inappropriate. *See Tull*, 481 U.S. at 424-25.

The lower court also erroneously assumed that it could deny a jury trial by characterizing petitioners' substantial money damages as "incidental" to the injunctive relief requested (A. 20a). This way of thinking repeatedly has been repudiated by this Court. *Dairy Queen*, 369 U.S. at 470; *Tull*, 481 U.S. at 425. Moreover, just as this Court in *Tull* commented that $22 million in damages "hardly can be considered incidental," 481 U.S. at 425, the damages in this case, though not yet calculated, substantially exceed that amount and likewise hardly can be considered incidental.

In sum, the lower court lost sight of the fact that it is the exception and not the rule to characterize damages as equitable relief. *Terry*, 494 U.S. at 570. The court turned the constitutional analysis upside down by effectively holding that if *some* equitable relief is involved, then there is no right to a jury trial on any issue. If this reasoning were employed universally, there would almost never be a jury trial in a case where the applicable statute did not specifically grant the right, and one of the important advantages of the merger of law and equity would be impaired.

Finally, a writ of certiorari should issue even though final judgment has not been entered. This Court has emphasized the responsibility of the courts of appeals to grant mandamus where necessary to protect the constitutional right to a trial by jury, *Dairy Queen*, 369 U.S. at 472, and has recently resolved constitutional jury trial questions on an interlocutory basis, *Terry*, 494 U.S. at 563. Much more is at stake than the prospect of retrying this massive class action if the jury trial decision below is incorrect. What is at stake is the fundamental constitutional right to a jury trial in all ERISA cases in which legal claims and remedies are involved. A writ of certiorari should be granted to resolve the conflict in the lower courts and to establish the appropriate reach of the Seventh Amendment in ERISA cases.

CONCLUSION

For the foregoing reasons, petitioners respectfully request that the petition for a writ of certiorari be granted.

Respectfully submitted,

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List of Petitioners Pursuant to Rule 14.1(b) 39a

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 92-2305

In re: ROBERT D. SPRAGUE, et al.,)
) ORDER
Petitioners.)

Filed: November 16, 1992

BEFORE: JONES and RYAN, Circuit Judges; and PECK, Senior Circuit Judge.

The petitioners seek a writ of mandamus directing the district court to reinstate their demand for a jury trial in this matter and to conduct the forthcoming trial as a jury matter. They have also moved for an expedited treatment of this matter, with briefing and oral argument. The defendant has responded in opposition to the request to expedite, and the plaintiffs have replied in support. The district court has forwarded the written opinion denying the request for a jury and a copy of the docket sheet in this matter. Following entry of the district court's opinion, the petitioners filed a supplement to their mandamus petition. The defendant has also tendered a response and filed an application for leave to respond.

As the petitioners have noted, a writ of mandamus may issue when it is clear that the district court has improperly denied a constitutional right to a jury trial. *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 472 (1962). The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations where the

petitioner can show a clear and indisputable right to the relief sought. *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 661-62 (1978); *Kerr v. United States Dist. Court*, 426 U.S. 394, 402-03 (1976). Upon review of the petition and the district court's written decision, we are of the opinion that the writ should not be granted. *See* Fed. R. App. P. 21(b). This denial is without prejudice to any right the petitioners may have to raise the jury issue in a post-judgment appeal.

Therefore, it is ORDERED that the petition for a writ of mandamus be denied. The motion to expedite and for argument is denied as moot.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT D. SPRAGUE, et al.,

Plaintiffs,

v.

GENERAL MOTORS CORPORATION,

Defendant.
_____/

Case No. 90-CV-70010
Hon. John Feikens

OPINION AND ORDER

A putative plaintiff class of approximately 40,000 non-union salaried retirees of the General Motors Corporation ("GM") sues under the Employee Retirement Income Security Act of 1974 ("ERISA"). They seek a judgment which would require GM to furnish them with basic health care coverage at no cost to them for their life-times, and for the life-times of their surviving spouses. At issue is whether plaintiffs are entitled to a jury trial. In this opinion, I find that plaintiffs are not entitled to a jury trial under ERISA or under the Seventh Amendment to the United States Constitution.

I. Procedural Background

On August 8, 1989, plaintiff Robert D. Sprague, together with 113 other named plaintiffs, filed a complaint in the United States District Court for the Central District of California against their previous employer, GM, alleging that the automaker had violated their rights under ERISA, 29 U.S.C. §§ 1001 *et seq.* The named plaintiffs filed the complaint as a purported class action pursuant to Federal Rule of Civil Procedure 23, and claimed to represent over 84,000 salaried retirees or their surviving spouses. Pursuant to 28 U.S.C. § 1404(a), Judge William D. Keller ordered the action transferred to this court on November 27, 1989.

The essence of the complaint is that GM violated the terms of its health care plan, thereby violating ERISA § §402, 502(a)(1)(B) and 502(a)(3), 29 U.S.C. §§ 1102, 1132, when it reduced or eliminated certain health care coverages in 1988. (Complaint, Count II). Plaintiffs also claim that the changes implemented in 1988 constituted a breach of GM's fiduciary duties arising under section 404 of ERISA, 29 U.S.C. § 1104 (Complaint, Count III). Plaintiffs assert separate causes of actions, arising from the same changes in health care coverages, based on breach of contract and equitable or promissory estoppel claims arising under "ERISA federal common law." (Complaint, Counts IV and V). Finally, plaintiffs allege that GM violated the requirements of ERISA by failing to maintain its health care plan pursuant to a written instrument, ERISA § 402(a), 29 U.S.C. § 1102(a); refusing or failing to supply requested information, ERISA § 502(c), 29 U.S.C. § 1132(c); and failing to comply with requirements for summary plan descriptions.

GM moved for summary judgment on Count II, arguing that the coverage modifications instituted in 1988 do not constitute

violations of the plan because retirees did not have vested benefits under the plan. Plaintiffs moved for summary judgment on Counts IV and V of the Complaint in favor of early retirees, based on bilateral contracts which allegedly contain GM's promise to provide early retirees with vested health care benefits. GM moved to dismiss Count III.

I granted GM's motion for summary judgment as to the general retirees but denied it as to the early retirees. *Sprague v. General Motors Corp.*, 768 F.Supp. 605 (E.D. Mich. 1991). I found that within the plan provisions, GM unambiguously reserved the right to change the plan; GM did not agree in the general plan documents to provide salaried employees with health care benefits which vested upon retirement for purposes of ERISA. However, I did not foreclose the possibility that GM bilaterally contracted to provide vested benefits to early retirees. I noted that it appears that some early retirement agreements contain GM's promise to furnish early retirees with a particular level of health care coverage in exchange for the early retirees' promise, among other things, to release GM from liability for certain causes of action. I commented that the early retirement agreements may be enforceable under ERISA as independent bilateral contracts or as modifications of GM's health care benefit plan.

Plaintiffs' motion for summary judgment was denied. Summary judgment is precluded for or against the early retirees as a class because there are genuine issues of material fact and law as to: (1) which "early retirement agreements" constitute bilateral contracts; (2) the terms of those contracts; and (3) whether the 1988 changes constitute a breach of those contracts. I granted GM's motion to dismiss Count III. For a more detailed discussion of the procedural history and factual scenario, see my earlier opinion. *Id.*

On November 4, 1991, I issued a class certification order establishing four subclasses of early retirees: (1) those who signed "long form" statements of acceptance; (2) those who signed "short form" statements of acceptance; (3) those who signed "statements of intent" to retire; and (4) those for whom no such documents can be found.

On August 11, 1992, I set trial for November 16, 1992, on Counts II and IV with regard to sub-classes (1) and (2). Plaintiffs demand a jury trial. Defendant filed a motion to strike plaintiffs' demand for jury trial. Parties filed briefs on this issue, and a hearing was held on October 8, 1992. Following this hearing, the parties submitted supplemental briefs, and another hearing was held on October 16, 1992. For the reasons set forth below, defendant's motion to strike plaintiffs' demand for jury trial is granted.

II. Analysis

The Seventh Amendment to the Constitution states: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." The Amendment provides for a jury trial where the relief sought is legal rather than equitable in nature. *Chauffeurs, Teamsters, and Helpers, Local 391 v. Terry*, 494 U.S. 558, 565 (1990). To determine the Seventh Amendment's applicability:

> [T]he "legal" nature of an issue is determined by considering, first, the pre-merger custom with reference to such questions; second, the remedy sought; and, third, the practical abilities and limitations of juries.

Ross v. Bernhard, 396 U.S. 531, 538 n.10 (1970). The emphasis remains on the second factor. *Terry*, 494 U.S. at 565, n.4.

Plaintiffs cite my earlier decision in *Sprague*, 768 F. Supp. at 612, for the proposition that their claims are federal common law claims under ERISA for breach of contract, or alternatively, ERISA section 502 claims for breach of the plan. - "Actions challenging an employer's denial of benefits before enactment of ERISA were governed by principles of contract law." *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101, 112 (1989). Breach of contract claims have traditionally been legal claims. *Id.* Plaintiffs argue that the following types of contract issues are the kind traditionally tried to a jury: (1) whether the early retirees contractually agreed to give up their jobs in exchange for certain consideration; (2) whether the consideration received by the early retirees included health care benefits for life at GM's expense; and (3) whether the contract was breached by certain modifications made by GM in 1988. Second, plaintiffs note that in their complaint they seek money damages

> in an amount equal to the value of all benefits which plaintiffs and other GM salaried retirees have failed to receive as a result of GM's actions complained of here, and all other damages resulting therefrom, together with interest and earnings thereon....

Complaint, Prayer for Relief, Par. I. Plaintiffs claim such amounts are compensatory damages and therefore legal in nature; they claim they are seeking money damages to put themselves in as good as position as they would have occupied had the contract been fully performed by GM. Plaintiffs argue that their losses (the so-called damages) are not the mirror image of GM's gain (restitution). They concede that GM was able to save all the health

care expenses for which it would have paid out-of-pocket reimbursements to the plaintiffs had the benefit modifications not occurred. Plaintiffs argue, though, that they have suffered more loses than what GM has gained. For example, out-of-pocket medical expenses incurred by the plaintiffs following the benefit modifications may have substantially exceeded the cost to GM of continuing certain coverages.

Last, plaintiffs claim their so-called federal common law breach of contract issues are fact intensive. For example, the fact-finder will be asked to determine whether, in exchange for the plaintiffs' agreement to relinquish their jobs voluntarily and, in many cases, to waive legal rights, GM agreed to provide health care benefits for life to the retirees at no cost. However, as plaintiffs themselves note, the practical abilities and limitations of juries are not an independent basis for extending the right to a jury trial. *Terry*, 494 U.S. at 565, n.4. Thus, this factor deserves little weight and attention.

In terms of the first factor, the United States Supreme Court emphasized in *Firestone, supra*, that ERISA "abounds with the language and terminology of trust law." *Firestone*, 489 U.S. at 111. In determining the appropriate standard for judicial review of plan administrators' interpretations of benefit plan provisions, the Court stated it would be "guided by principles of trust law." *Id.* The court's change in *Firestone* in the standard of review from arbitrary and capricious to *de novo* does not automatically convert a claim ordinarily brought in equity into a claim brought at law. *See e.g., Blake v. Unionmutual Stock Life Ins. Co. of Am.*, 906 F.2d 1525, 1526 (llth Cir. 1990). Traditionally, claims relating to trust principles were under the jurisdiction of the courts of equity, even where monetary relief was sought. *See, e.g., Clews v. Jamieson*, 182 U.S. 461, 479 (1901).

As noted above, the second prong of the Seventh Amendment inquiry, the type of remedy sought, carries the most weight in a right to jury trial analysis. Even if plaintiffs were successful in the characterization of their claim as one of breach of contract thereby satisfying the first prong, my conclusion that the relief they seek, as discussed below, is equitable still denies them a right to jury trial. *Blake*, 906 F.2d at 1526 (claim for plan benefits under ERISA is a suit for equitable relief and, therefore, no right to a jury trial exists notwithstanding plaintiff's characterization of claim as one for breach of contract); *Pegg v. General Motors Corp.*, 793 F. Supp. 284 (D. Kan. 1992).

The United States Court of Appeals for the Sixth Circuit precedent clearly disfavors plaintiffs' demand for a right to jury trial under ERISA. In *Crews v. Central States, Southeast, and Southwest Areas Pension Fund*, 788 F.2d 332 (6th Cir. 1986), the plaintiff sought a refund of contributions to a pension plan mistakenly made on his behalf. The court found that plaintiff's action seeking return of mistakenly paid contributions was essentially an action for restitution, which is an equitable remedy, and thereby denied a Seventh Amendment right to jury trial. *Id.* at 338. In *Daniel v. Eaton Corp.*, 839 F.2d 263 (6th Cir.), *cert. denied*, 488 U.S. 826 (1988), the plaintiff claimed he was denied early retirement benefits in violation of ERISA section 502. The plaintiff sought recovery of all past due benefits with interest, and an order requiring his instatement into the early retirement plan. In rejecting plaintiff's demand for a jury trial, the court broadly held that "[a]lthough there may be actions under ERISA in which a jury trial is proper, in actions for recovery of benefits under Section 502, 'there is no right to jury trial.'" *Id.* at 268. In *Bair v. General Motors Corp.*, 895 F.2d 1094 (6th Cir. 1990), the plaintiff sought instatement into a retirement program, GM's Special Separation Program. The plaintiff alleged that he had

contracted with GM to retire early under the program's provisions; GM had denied his applications to enter the program claiming that he was too valuable an employee to give an incentive to retire early. As in *Daniel*, the plaintiff sought payment of allegedly past due early retirement benefits as well as an order compelling payment of future benefits. Despite plaintiff's attempt to distinguish his claim from the plaintiff's claim in *Daniel*, the court in *Bair* denied the right to jury trial.

The plaintiff in *Bair* first attempted to distinguish *Daniel* by arguing that the jury trial right remains when relief is sought under ERISA subsection 502(a)(1)(B), as opposed to subsection 502(a)(3) which by its terms is expressly limited to providing equitable relief. The court in *Bair* stated that *Daniel* had unequivocally denied the right to jury trial for all section 502 actions. *Bair*, 895 F.2d at 1096. The plaintiff in *Bair* further attempted to distinguish *Daniel* by arguing, as do the plaintiffs in the case at hand, that the recovery of benefits claim is actually a breach of contract claim, and, accordingly, a jury trial is available because the relief sought is legal rather than equitable. The Sixth Circuit rejected such an analysis:

> Appellant is seeking only instatement in the Program and the payments due him had he initially been granted participation to begin with. Thus, his action is one in equity, not at law. He therefore is not entitled to a jury...merely because issues of contract law are involved in his claim.

Bair, 895 F.2d at 1097. Although the court in *Bair* did not refer expressly to the Seventh Amendment, it indicated that it was engaging in the test mandated by the Constitution as reflected in its citation to a case involving the constitutional right to a jury trial,

United Transp. Union, Local 74 v. Consolidated Rail Corp., 881 F.2d 282 (6th Cir. 1989), *judgment vacated and remanded*, 494 U.S. 1051 (1990), *opinion modified and reaffirmed*, 902 F.2d 36 (6th Cir. 1990). Courts have subsequently understood the court in *Bair* to have engaged in constitutional analysis. *See Pegg v. General Motors Corp.*, 793 F. Supp. 284 (D. Kan. 1992).

Bair cannot be distinguished simply because plaintiffs are seeking "all other damages resulting" from GM's conduct. Complaint, Prayer for Relief, Par. I. First and foremost, plaintiffs are asking for the benefits that were allegedly promised them by GM; they seek repayment of premiums they have already paid themselves. This is restitution and not compensatory damages. Second, and perhaps alternatively, in *Warren v. Society National Bank*, 905 F.2d 975 (6th Cir. 1990), *reh'g denied, en banc*, 1990 U.S. App. Lexis 16686 (6th Cir. 1990), *cert. denied*, __ U.S. __, 111 S. Ct. 2256 (1991), the plaintiff sought "contractual damages" under ERISA section 502 (a) (3) for losses incurred as a result of the plan administrator's failure to comply with directions regarding the lump sum distribution of pension benefits. The court concluded that the plaintiffs were entitled to monetary damages as equitable relief under ERISA section 502(a)(3). The Sixth Circuit stated:

> Equitable relief includes monetary damages where required to afford complete relief. It is the historic purpose of equity to secure complete justice, and courts may adjust their remedies so as to grant the necessary relief.

Id. at 982. The court stressed Justice Brennan's concurrence in *Massachusetts Mutual Life Ins. Co. v. Russell*, 473 U.S. 134 (1985), that under the law of trusts, upon which ERISA is based, monetary damages were properly considered equitable relief

when necessary to do complete justice. *Warren*, 905 F.2d at 982.

Plaintiffs' attempt to distinguish *Bair* and *Daniel* by arguing that: (1) recent Supreme Court cases have, in effect, over-ruled the Sixth Circuit decisions; and (2) their claims arise under federal common law which provides a source of jurisdiction independent of ERISA section 502, thereby making the line of Sixth Circuit canes irrelevant.

Plaintiffs argue that the recent Supreme Court cases of *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101 (1989); *Chauffeurs, Teamsters, and Helpers, Local 391 v. Terry*, 494 U.S. 558 (1990); and *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 111 S. Ct. 478 (1990), have, in effect, overruled the Sixth Circuit cases denying a right to jury trial under ERISA section 502.

In *Firestone*, the Supreme Court stated:

> Actions challenging an employer's denial of benefits before enactment of ERISA were governed by principles of contract law. If the plan did not give the employer or administrator discretionary or final authority to construe uncertain terms, the court reviewed the employee's claim as it would have any other contract claim -- by looking to the terms of the plan and other manifestations of the parties' intent.

489 U.S. at 112. From this language, plaintiffs argue that the Supreme Court has declared that where the payment or non-payment of benefits is at issue, the action is one at law.

The Court in *Firestone* was faced with the issue of deciding the appropriate standard for judicial review of plan administrators' interpretations of benefit plan provisions. Nowhere did the Court even hint that its decision was affecting the body of case law finding no right to a jury trial in ERISA actions.[1] *Blake v. Unionmutual Stock Life Ins. Co. of Am.*, 906 F.2d 1525, 1526 (llth Cir. 1990), expressly rejected the argument that the Court's change in *Firestone* in the standard of review converts the claim from an equitable claim to a breach of contract (legal) claim. Significantly, *Firestone* was decided before the Sixth Circuit issued its opinion in *Bair*. Thus, plaintiffs' contention that *Bair's* denial of a right to jury trial under ERISA section 502 is no longer good law in light of *Firestone* carries no weight.

Plaintiffs cite *Terry* for the grand proposition that the Supreme Court has held that back pay damages are not restitutionary, and that they may be legal in nature. (Brief at 15, n.10). In *Terry*, employees brought a suit against their union under section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, for violation of the duty of fair representation. The Court was faced with the issue of whether the requested remedy of back pay and benefits was legal or equitable. The Court stated that because the back pay sought was not money wrongfully held by the union, but was instead money and wages which respondent would have received had the union processed their grievances properly, the relief was not restitutionary. *Terry*, 494 U.S. at 571. *Terry* was not an ERISA case; LMRA was the statute in question. More important, the Court itself noted that monetary relief is not

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[1] *Pegg v. General Motors Corp.*, 793 F. Supp. 284 (D. Kan. 1992), notes that prior to *Firestone*, it was uniformly held that actions under ERISA were equitable, thereby depriving a party of the right to jury trial.

necessarily legal relief. *Id.* at 570. As an example, it noted that both it and Congress have characterized back pay under Title VII, 42 U.S.C. § 2000e *et seq.*, as restitutionary and therefore equitable.

In the situation at hand, the monetary relief which plaintiffs are requesting is restitutionary. They are asking GM to return to them monies allegedly retained improperly as the result of imposing co-payments and deductibles and reducing certain coverages. This is restitution in its most classic sense. "Restitution in limited to 'restoring the status quo and ordering the return of that which rightfully belongs to the purchaser or tenant.'" *Tull v. United States*, 481 U.S. 412, 424 (1987) (citations omitted). Thus, plaintiffs' claims in the situation at hand are different from those in *Terry*.

Ingersoll-Rand was decided shortly after *Bair*. Plaintiffs point to the following language for their contention that the Supreme Court now recognizes that legal remedies may arise under ERISA, thereby implying the constitutional right to a jury trial.

> Not only is § 502(a) the exclusive remedy for vindicating § 510-protected rights, there is no basis in § 502(a)'s language for limiting ERISA actions to only those which seek "pension benefits." It is clear that the relief requested here is well within the power of the federal courts to provide.

Ingersoll-Rand, 111 S. Ct. at 486. Such language is located at the very end of a case involving pre-emption. The plaintiff claimed he had been terminated so the employer could avoid accrual of pension benefits. The sole question decided by the Court was whether a wrongful termination action brought under state contract and tort

law was preempted by ERISA section 514(a). The Court held that the action was pre-empted due in part to the fact that the action conflicted with ERISA section 510 which creates a statutory cause of action against employers who terminate employees in order to avoid the vesting or payment of pension benefits.

Many courts have not interpreted the language as expanding relief available under ERISA.

> Had the Supreme Court intended to expand the realm of potential relief available under ERISA...it would have done so explicitly. Such a departure from precedent likely would not have been accomplished in a single sentence, in *dicta*, at the close of an opinion focused exclusively on a wholly different issue.

Gaskell v. Harvard Coop. Soc'y, 762 F. Supp. 1539, 1544 (D. Mass. 1991).[2]

Some federal district courts have extrapolated from these Supreme Court cases, as plaintiffs would like this court to do, the notion that actions seeking "damages" under ERISA section 502 for non-payment of benefits are actions at law thereby granting a right to jury trial.[3]

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[2] *See also McRae v. Seafarers' Welfare Plan*, 920 F.2d 819 (llth Cir. 1991); *Harsch v. Eisenberg*, 956 F.2d 651, 660 (7th Cir. 1992); and *O'Neil v. Gencorp, Inc.*, 764 F. Supp. 833, 834 (S.D.N.Y. 1991).

[3] *See, e.g., International Union, United Automobile, Aerospace and Agricultural Implement Workers of America v. Midland Steel Products Co.*, 771 F. Supp. 860 (N.D. Ohio 1991); *Vicinanzo v.*

(continued...)

As explained above, I am unable to imply any suggestion by the Supreme Court in these various cases, that an action under ERISA can be an action at law thereby granting the right to jury trial. I am not alone in drawing this conclusion in the wake of these Supreme Court cases. Two other federal district courts have examined *Bair* in light of the Supreme Court cases discussed above and have concluded that *Bair* remains good law. In *Miner v. Community Mut. Ins. Co.*, 778 F. Supp. 402 (S.D. Ohio 1991), the court was asked to extend the right to a jury trial to an ERISA section 502(a)(3) claim; the court refused. It rejected the argument that monetary relief sought under ERISA was a legal remedy entitling plaintiffs to a jury trial. It stated that the "*dicta* in *Ingersoll-Rand* does not constitute a clear departure from these principles", while reiterating that "[t]he Sixth Circuit Court of Appeals has unequivocally held that a claimant is not entitled to a jury trial in an action brought under § 502 and has refused to carve out exceptions to this broad rule." *Id.* at 404. Similarly, *Pegg v. General Motors Corp.*, 793 F. Supp. 284 (D. Kan. 1992), expressly adopted the reasoning of *Bair* even in light of *Firestone* and *Ingersoll-Rand* and even though *Bair* was not binding precedent on a federal district court in Kansas. In *Pegg*, plaintiff was seeking benefits under GM's Special Separation Incentive Program, similar to the early retirement programs at issue here. Although the court found that the first prong of the Seventh Amendment test was met,

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[3](...continued)
Brunschwig & Fils, Inc., 739 F. Supp. 882 (S.D.N.Y. 1990); *McDonald v. Artcraft Electric Supply Co.*, 774 F. Supp. 29 (D.D.C. 1991); and *Resnick v. Resnick*, 763 F. Supp. 760 (S.D.N.Y. 1991). Despite being located in the Sixth Circuit, the *Midland Steel Products* court did not mention controlling precedent such as *Bair* or *Daniel*; thus, the weight of that court's decision is limited.

in that plaintiff's claim was basically one for breach of contract, it concluded the relief sought was equitable. The plaintiff in *Pegg*, as in *Bair*, sought instatement into the retirement program and the recovery of the salary and benefits that her employer wrongfully withheld from her under that program. Such relief is equitable. *Pegg*, 793 F. Supp. at 286.

In addition to *Bair*, other circuit courts of appeals have maintained their positions of no jury trial under ERISA despite the language of the Supreme Court opinions discussed *supra*. *See Blake v. Unionmutual Stock Life Ins. Co. of Amer.*, 906 F.2d 1525 (11th Cir. 1990); *Kirk v. Provident Life and Acc. Ins. Co. of Amer.*, 942 F.2d 504 (8th Cir. 1991); *Cox v. Keystone Carbon Co.*, 894 F.2d 647 (3d Cir.), *cert. denied*, __ U.S._ _, 111 S. Ct. 47 (1990). This court is unaware of a federal court of appeals that has held there is a right to jury trial for claims of benefits under ERISA section 502.[4] Plaintiffs also argue that *Bair* and the

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[4] Plaintiffs contend that *Senn v. United Dominion Industries, Inc.*, 951 F.2d 806 (7th Cir. 1992), is an appellate decision that upholds the constitutional right to a jury trial in an ERISA action. However, the plaintiffs in *Senn* sought monetary damages under section 301 of the Labor Management Relations Act ("LMRA") for breach of contract, and they sought injunctive relief pursuant to sections 404(a)(1), 502(a)(1)(B), and 502(a)(3) of ERISA. The court stated that the plaintiffs had a constitutional right to a jury trial because of the legal claim they were seeking under LMRA. Thus, *Senn* does not stand for the proposition that a constitutional right to jury trial exists under ERISA. *See also Smith v. ABS Industries, Inc.*, 653 F. Supp. 94 (N.D. Ohio 1986).

Additionally, plaintiffs cite *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987) for the proposition that ERISA section 502 was modeled after LMRA section 301 with regard to enforce mechanisms; accordingly, say plaintiffs, the right to jury trial under LMRA

(continued...)

equitable limitations of ERISA section 502 are irrelevant to the situation at hand. They claim that because they are asserting federal common law claims for breach of contract for employee benefits under ERISA, they are not limited by the express statutory provisions authorizing civil actions under section 502. Instead of utilizing the express statutory grant of jurisdiction under section 502, plaintiffs assert their federal common law claims can be adjudicated directly pursuant to 28 U.S.C. § 1331(a) (the federal question jurisdiction statute). *See Northeast Department ILGWU Health and Welfare Fund v. Teamsters Local Union No. 229 Welfare Fund*, 764 F.2d 147, 155 (3d Cir. 1985). Plaintiffs claim that *Whitworth Bros. Storage Co. v. Central States, Southeast and Southwest Areas Pension Fund*, 794 F.2d 221, 236 (6th Cir.), *cert. denied*, 479 U.S. 1007 (1986), stands for the proposition that limitations imposed by ERISA section 502 are inapplicable to their claims under the federal common law of ERISA. Plaintiffs claim that when *Whitworth* is read in connection with the Supreme Court decision in *Ingersoll-Rand*, discussed *supra*, full contractual remedies, including the right to jury trial, are available to them.

Plaintiffs' argument is a boot-strapping attempt to avoid clear Sixth Circuit precedent. Plaintiffs' ERISA federal common law claim is merely a recapitulation of their section 502 recovery of benefits claim. The underlying facts alleged are the same, and the recovery sought is the same. Given the rule among the

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[4](...continued)
translates into a right to jury trial under ERISA. However, the Supreme Court was making a comparison between the two statutes in a pre-emption situation: "The legislative history demonstrates that the pre-emptive force of § 502(a) was modeled after § 301 of the LMRA." Thus, plaintiffs' analogy between the two statutes concerning the right to jury trial is not as strong as they contend.

appellate courts and many district courts, as discussed above, that no jury trial exists under ERISA section 502, it would be disruptive to the statutory scheme to allow a jury trial on plaintiffs' functionally equivalent federal common law claims.

Moreover, *Northeast Dept. ILGWU*, as well as other cases upon which plaintiffs rely for their proposition that this court has jurisdiction under section 1331 to consider their federal common law claims all involved situations in which the plaintiff's claim could not proceed under ERISA; the courts stated that the express jurisdictional provisions of ERISA, found in 29 U.S.C. § 1132, did not authorize federal jurisdiction over the plaintiff's suit. *See, e.g., Northeast Dept. ILGWU*, 764 F.2d at 154; *Whitworth Bros. Storage Co.*, 794 F.2d at 228, 233; and *Provident Life and Accident Ins. Co. v. Waller*, 906 F.2d 985, 987 (4th Cir.), *cert. denied*, 111 S. Ct. 512 (1990).[5] The courts held that the absence of an express statutory grant of jurisdiction under ERISA was irrelevant as the plaintiff's claim could be adjudicated in federal court pursuant to 28 U.S.C. § 1331(a). In the case at hand, the express statutory grant of jurisdiction under ERISA is relevant. This court's jurisdiction under ERISA is not at issue; what is at issue is whether plaintiffs have a right to jury trial. The above cited courts did not have to deal with a potentially conflicting decision of denying a right to jury trial under the ERISA statute itself while granting a right to jury trial under ERISA federal common law. For the reasons discussed *supra*, this court will not engage in such a confusing path in unchartered waters.

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[5] In *Northeast Dept. ILGWU Health and Welfare Fund v. Teamsters Local Union No. 229*, 764 F.2d 147 (3d Cir. 1985), for example, jurisdiction over one action by one employee benefit plan against another plan seeking declaration of plans' rights and obligations could not be obtained through an express grant of ERISA.

Even if this court were to accept plaintiffs' notion that their federal common law claims maintain jurisdictional grounds independent of ERISA section 502, the characterization of the relief sought would remain the same; as discussed above, plaintiffs are seeking restitutionary, and not compensatory, relief. Under the second prong of the Seventh Amendment test, discussed *supra*, plaintiffs' requested relief still would not allow them a jury trial.

Moreover, "a monetary award incidental to or intertwined with injunctive relief may be equitable." *Terry*, 494 U.S. at 571. The monetary relief requested by plaintiffs pales in comparison to the scope of injunctive relief sought. Plaintiffs are asking for all benefits which they have failed to receive and any other "damages" as a result of GM's actions. GM's action occurred in 1988; there has been an alleged loss of benefits for four years. Plaintiffs are also asking this court to compel GM to restore its health care program to its pre-1988 status and to prevent any further changes for decades to come. Because the monetary relief would only cover a period of a few years, while the injunctive relief would cover a period of decades, any monetary award would be incidental to the injunctive relief, thereby depriving plaintiffs of a jury trial right.[6]

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[6] Plaintiffs cite *Senn v. United Dominion Industries, Inc.*, 951 F.2d 806 (7th Cir. 1992), for the exact opposite proposition: a right to jury trial cannot be abridged simply by characterizing the legal claim as incidental to the equitable relief sought. In reality, the court in *Senn* said: "It is well settled that when legal and equitable relief are *separately authorized by statute*, and the 'legal claim is joined with [the] equitable claim, the right to jury trial on the legal claim, including all issues common to both claims, remains intact.'" *Id.* at 813 (emphasis added) (citations omitted). Because legal and equitable relief are not separately authorized by the ERISA statute, plaintiffs' proposition carries little weight.

IT IS SO ORDERED.

/s/ John Feikens
John Feikens
United States District Judge

Dated: October 23, 1992

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT D. SPRAGUE, et al.,

Plaintiffs,

vs. Case No. 90-CV-7OO10
Hon. John Feikens

GENERAL MOTORS CORPORATION,

Defendant.
_____/

OPINION AND ORDER

This is a compelling case for interlocutory appeal. I certify it herewith pursuant to 28 U.S.C. § 1292(b). A putative plaintiff class of more than 84,000 non-union ("salaried") retirees of the General Motors Corporation ("GM"), sues under the Employee Retirement Income Security Act of 1974 ("ERISA"). They seek a judgment which would require GM to furnish them with basic health care coverage at no cost to them for their lifetimes, and for the lifetimes of their surviving spouses. At issue is whether plaintiffs' health care benefits vested, *i.e.*, became immutable upon retirement, or whether GM in free to reduce those benefits.

In this opinion I find that benefits under GM's health care plan for salaried retirees (the "plan") did not vest upon retirement.

But I find that GM may have entered into bilateral contracts to provide such benefits to approximately 40,000 so-called "early retirees." Accordingly, I dismiss the claims of general retirees, but allow the claims of early retirees to proceed.

It does not appear to be wise or expedient to try this protracted case before there is a resolution of applicable law. Specifically, I find that there is substantial uncertainty in the case law whether ERISA preempts early retirees from claiming that GM bilaterally contracted with them to vest health care benefits that were otherwise not vested under general plan documents. If plaintiffs are allowed to proceed on this claim, it will be necessary to conduct extensive discovery to determine the terms and conditions of 40,000 alleged bilateral contracts. Before going down that path, it is prudent to determine whether the U.S. Court of Appeals for the Sixth Circuit will agree that the early retirees can state a cause of action. Accordingly, I certify the following questions of law:

1. Did the district court properly find, as a matter of law, that benefits under GM's health care plan for salaried retirees did not vest upon retirement?

2. If so, can early salaried retirees of GM state a cause of action under ERISA to enforce claimed vested health care benefits evidenced by bilateral contracts?

Although I do not believe that there is a substantial difference of opinion in the case law as to the first question, it must be reached before the second question can be resolved because the early retirees need not rely on bilateral contracts if the Sixth Circuit

finds that they have vested benefits under general plan documents. I therefore certify both questions for interlocutory appeal.

I. Procedural Background

On August 8, 1989, plaintiff Robert D. Sprague, together with 113 other named plaintiffs, filed a complaint in the United States District Court for the Central District of California against their former employer, GM, alleging that GM had violated their rights under ERISA, 29 U.S.C. §§ 1001 *et seq.* The named plaintiffs filed the complaint as a purported class action pursuant to Federal Rule of Civil Procedure 23, and claim to represent over 84,000 salaried retirees or their surviving spouses. On November 27, 1989, Judge William D. Keller ordered the action transferred to this court pursuant to 28 U.S.C. § 1404(a).

The essence of the complaint is that GM violated the terms of its health care plan, and thus ERISA §§ 402, 502(a)(1)(B) and 502(a)(3), 29 U.S.C. §§ 1102, 1132(a)(1)(B) and 1132(a)(3), when it reduced or eliminated certain health care coverages in 1988. (Complaint, Count II).

Plaintiffs also claim that the changes implemented in 1988 constitute a breach of GM's fiduciary duties arising under Section 404 of ERISA, 29 U.S.C. § 1104. (Complaint, Count III). Plaintiffs assert separate causes of action, arising from the same changes in health care coverages, based on breach of contract and equitable or promissory estoppel claims arising under "ERISA federal common law." (Complaint, Counts IV and V). Finally, plaintiffs allege that GM violated the requirements of ERISA by failing to maintain its health care plan pursuant to a written instrument, ERISA § 402(a), 29 U.S.C. § 1102(a); refusing or

failing to supply requested information, ERISA § 502(c), 29 U.S.C. § 1132(c); and failing to comply with requirements for summary plan descriptions.

The matter is before me on cross-motions for partial summary judgment.[1] GM moves for summary judgment on Count II, arguing that the coverage modifications instituted in 1988 do not constitute violations of its plan because retirees did not have vested benefits under the plan.

Plaintiffs move for summary judgment on Counts IV and V of the complaint in favor of early retirees based on bilateral contracts which allegedly contain GM's promise to provide early retirees with vested health care benefits.

For reasons set forth below, GM's motion for summary judgment is GRANTED as to general retirees but DENIED as to early retirees. Plaintiffs' motion is DENIED.

II. Facts

In 1964, GM began to pay the full cost, *i.e.*, the insurance premiums, for basic hospital, medical, and surgical insurance for salaried retirees. In 1968, this benefit was extended to most surviving spouses. GM also offered salaried retirees and surviving spouses an additional layer of coverage under its Comprehensive

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[1] This opinion also addresses, in part, GM's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

Medical Expense Insurance Program (CMEIP).[2] CMEIP participants were required to pay co-payments, deductibles, and a portion of the insurance premiums.

GM provided these coverages through arrangements it had with various private insurance companies throughout the country. Some of these arrangements were memorialized in written contracts of insurance between the carrier and GM; others were not. All insurance carriers provided participants with certificates of insurance detailing the terms of coverage.

When GM became self-insured in 1985, the use of insurance certificates was discontinued. Thereafter, GM drafted a document entitled "The General Motors Health Care Insurance Program for Salaried Employees." This document, together with subsequent writings which announced changes in coverage, describe GM's post-1985 health care coverage plan.

The primary way GM has communicated its health care coverage plan to employees and retirees is through summary booklets. Prior to 1974 GM periodically published a booklet entitled "The GM Insurance Program For Salaried Employees." With the enactment of ERISA in 1974, the method of supplying participants with plan summaries was changed. Thereafter GM published a plan summary entitled "Highlights of Your GM Benefits." In addition, commencing in 1977, when summary plan description ("SPDs") were first required by ERISA, GM began to publish a booklet entitled "Your Benefits in Retirement," which

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[2] When GM became self-insured in 1985, CMEIP became CMEP.

served and continues to serve as the summary plan description for benefits provided to salaried employees.

Several of the summary booklets distributed to GM salaried employees and retirees contain statements informing participants that GM will pay the full cost of basic health care coverage during their retirement. For example, the 1968 booklet entitled "The General Motors Insurance Program for Salaried Employees" and its successor version issued in 1971 both contain provisions which state:

> If you retire...and are eligible to receive retirement benefits under the provisions of the GM Retirement Program for Salaried Employees, you may keep your basic hospital, surgical and medicai expense coverages in effect.... GM will pay the full monthly premium or subscription charge for such coverage.

A 1974 booklet entitled "Highlights of Your GM Benefits" contains a heading entitled "After Retirement, Your Insurance Coverages Can be Continued As Follows" and states:

> Hospital-Medical Coverages: Your basic coverages will be provided at Corporation expense for your lifetime (except for voluntary retirement between ages 55 and 60 when combined years of age and credited service total less than 85). Dental coverages cannot be continued.

A 1977 booklet entitled "Your Benefits In Retirement" contains a section entitled "Your Health Care Benefits," and includes this question and answer:

> Are My Health Care Coverages Continued While I Am Retired?
>
> Your basic health care coverages will be provided at GM's expense for your lifetime....

That same booklet also contains a section that reads:

> Who Pays for My Benefits?
>
> General Motors pays the full cost of any basic health care coverages that are continued for most retired employees and for eligible surviving spouses and children of deceased retirees.

Similar or identical statements are contained in numerous other booklets distributed by GM or its insurance carriers through the years.

However, these booklets also contain statements warning participants that their benefits are subject to change. Except for the booklet issued between 1974 and 1977,[3] each booklet contains a provision similar to one of the following:

> General Motors believes wholeheartedly in this Insurance Program for GM men and women, and expects to continue the Program indefinitely. However, GM reserves the right to modify, revoke, suspend, terminate, or change the Program, in whole or in part, at any time....

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[3] GM provides no explanation as to why the 1974-77 booklet omitted a modification clause.

GM health care coverages have been changed from time to time through the years and are subject to change in the future.

The Corporation reserves the right to amend, modify, suspend, or terminate its benefit Programs by action of its Board of Directors.

GM reserves the right to amend, change or terminate the programs described in this booklet.

In addition to the booklets described above, GM distributed various documents to the 40,000 members of the putative plaintiff class who took early retirement.

Beginning in 1974, GM instituted a program of Special Early Retirement with enhanced benefits for pension eligibles as an inducement for their departure in connection with plant closing, workforce downsizing, or other action initiated by GM. Over the years GM also offered other types of early retirement packages.

Many early retirees signed a "statement of acceptance," evidencing their agreement to accept GM's offer of early retirement. In some of these statements the early retiree affirms that he/she has "reviewed the benefits applicable" to him/her and "accepts them." In exchange, the retiree promises to release GM from liability for certain causes of action potentially connected with the early departure, including claims of age discrimination. Prior to signing these forms, many early retirees were given benefit summaries describing the health care benefits which they would receive during retirement.

In 1987, GM announced modifications in its health care program, to become effective in 1988 for salaried employees, retirees and surviving spouses. Under the modified program, participants who opt for traditional fee-for-service coverage[4] are required to pay an annual $200 individual or $250 family deductible for basic coverage. After the annual deductible is met, participants are responsible for a 20% co-payment for most basic services, until the annual out-of-pocket expense equals a maximum of $500. Combined, the deductibles and co-payments require participants to pay an annual maximum of $750 in medical bills which were previously paid by GM.[5]

III. Analysis

It is well established that "ERISA simply does not prohibit a company from eliminating previously offered benefits that are neither vested nor accrued." *Adams v. Avondale Industries, Inc.*, 905 F.2d 943, 948 (6th Cir. 1990) (quoting *Phillips v. Amoco Oil*

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[4] Since 1985 GM has allowed participants to opt for coverage through local Health Maintenance Organizations or Preferred Provider Organizations. The co-payments and deductibles instituted in 1988 did not apply to these participants. It appears that approximately 85% of the putative plaintiff class opt for traditional fee-for-service coverage.

[5] Several other changes were made in GM's health care program at the same time. For example, vision and hearing aid coverages were eliminated; subsequently they were made available subject to co-payments and deductibles. CMEP deductibles were increased, and GM increased the monthly contribution required of CMEP participants. GM also instituted several benefit increases.

Co., 799 F.2d 1464, 1471 (llth Cir. 1986)). As explained by committees of both the House and Senate:

> [The] term "accrued benefit" refers to pension or retirement benefits and is not intended to apply to certain ancillary benefits, such as medical insurance or life insurance, which are sometimes provided for employees in conjunction with a pension plan, and are sometimes provided separately. To require the vesting of these ancillary benefits would seriously complicate the administration and increase the cost of plans whose primary function is to provide retirement income.

See Moore v. Metropolitan Life Ins. Co., 856 F.2d 488, 491 (2d Cir. 1988). Congress rejected the automatic vesting of medical insurance plans because "medical insurance must take account of inflation, changes in medical practice and technology, and increases in the cost of treatment independent of inflation." *Id.* at 492. These unstable variables prevent accurate predictions of future needs and costs. *Id.*

Although medical insurance benefits do not vest automatically under ERISA, such benefits may vest by agreement between the parties. *In re White Farm Equipment Co.*, 788 F.2d 1186, (6th Cir. 1986), the court held that:

> [T]he parties may themselves set out by agreement or by private design, as set out in plan documents, whether retiree welfare benefits vest, or whether they may be terminated. In construing such agreements, courts may draw inferences or make presumptions as this court has done in construing collective bargaining agreements providing welfare benefit plans.

Id. at 1193. Thus, the central issue in this case is whether GM set out in the plan documents an agreement or "private design" to vest health care benefits upon retirement, or provided that such benefits are subject to change.

As the court in *White Farm* indicates, the starting point for determining plaintiffs' rights under GM's health care plan is the "plan documents" themselves. *See also Musto v. American General Corp.*, 861 F.2d 897, 900 (6th Cir. 1988). ERISA requires that every employee benefit plan be established and maintained pursuant to a "written instrument." 29 U.S.C. § 1102(a)(1). A program under which an employer provides medical insurance benefits constitutes such a plan, *see* 29 U.S.C. §§ 1002(l)(A) and (3), and the insurance policies themselves are the "written instruments" required by law. *Musto, id.* at 901. Courts have also looked at written summary plan descriptions (SPDs)[6], required by ERISA 29 U.S.C. §§ 1022 (a)(1) and 1024(b)(1), as evidence of the terms and conditions of employee welfare plans. *Musto, id.* at 904-906 (court analyzed insurance policy, insurance certificates, and relevant SPDs); *see also White Farm*, 788 F.2d at 1193-94 (court relied on SPDs as "indirect evidence" of the plan's terms). Accordingly, in this case I have reviewed the underlying plan documents, summary booklets, and SPDs in order to determine the terms of GM's health care plan for salaried retirees.

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[6] By 1977 ERISA had made it mandatory for the administrator of a welfare plan such as GM's to furnish each participant with "summary" descriptions of the plan, "written in a manner calculated to be understood by the average plan participant...." 29 U.S.C. §§ 1022(a)(1) and 1024(b)(1).

The underlying plan documents available here include various contracts and certificates of insurance, and a program statement drafted by GM in 1985. In none of these documents do I find GM's agreement to provide participants with vested health care benefits, and in fact plaintiffs do not rely upon these documents as evidence of such agreement. Rather, plaintiffs point to statements contained in summary booklets distributed by GM or its insurance carriers over the years. As plaintiffs correctly point out, these booklets uniformly contained provisions similar to the following:

> Your basic health care coverages will be provided at GM's expense for your lifetime....

Plaintiffs argue that provisions such as these constitute GM's agreement to provide salaried retirees, and eligible surviving spouses, with free lifetime health care coverage, and GM's agreement not to change that policy post-retirement. I do not agree.

Plaintiffs simply ignore plan provisions wherein GM unambiguously reserved its right to change the plan. For example, the very same page of the 1980 booklet cited by plaintiffs expressly warned retirees that:

> GM Health Care coverages have been changed from time to time through the years and are subject to change in the future.

Virtually all booklets contained similar provisions.[7] For example, the 1985 booklet stated that:

> General Motors Corporation reserves the right to amend, change or terminate the Plans and Programs described in this booklet.

These provisions effectively informed plaintiffs that GM's present policy was to pay the full cost of basic health care coverage during plaintiffs' retirement, but that GM reserved the right to change that policy. To show that GM violated the plan when it instituted the 1988 changes, plaintiffs would have to show that GM effectively promised never to change the plan during plaintiffs' retirement. I find no such promise in any of the plan documents. Rather, I find that GM unambiguously reserved the right to change the plan, and thus did not agree in the general plan documents to provide salaried retirees with vested health care benefits.

This reading of GM's health care plan is consistent with the holding of the United States Court of Appeals for the Sixth Circuit in *Musto*, 861 F.2d 897 (1988). In *Musto*, the company's booklets summarizing the group medical insurance plan for retired employees stated that "[t]he Company pays the entire cost of the

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[7] The only summary booklet not containing a provision warning employees of GM's right to modify or amend its health care benefit plan was issued in 1974. The next booklet, issued in 1977, clearly contained such a provision. Given that GM employees were generally put on notice of GM's right to modify its health care plan, I do not place great weight on its apparent failure to reiterate such notice in one booklet. *See Moore*, 856 F.2d at 490 (holding that employer's failure to include modification clause in one summary booklet did not defeat such right).

Plan with respect to Retired Employees." *Id.* at 905. However, the booklets also stated that "[t]he Company does, as it always has, reserve the right to change the Plan and, if necessary, discontinue it." *Id.* The district court, finding these provisions to be in "irreconcilable conflict," held that:

> To read the plan as providing lifetime paid up medical insurance and, at the same time, reserving the right to terminate the benefits at any time constitutes an illusory promise -- an express unqualified grant of a right negated by an express unqualified reservation of the right to terminate the grant.

See Musto v. American General Corp., 615 F.Supp. 1483, 1499 (D.C.Tenn. 1985). The court of appeals rejected this analysis, stating that:

> To read this summary as saying that the plan can never be changed in such a way as to mandate retiree contributions for continued medical coverage is to read into the summary something its authors did not put there (a promise to provide lifetime "paid up" medical insurance), while reading out of the summary something that clearly was put there (an express reservation of the right to change the plan). Such a reading violates the basic principle that each provision of a contract should be interpreted as part of an integral whole, to the end that all of the provisions may be given effect if possible.

Musto, 861 F.2d at 906.

In this case, plaintiffs ask me to read into the plan an irrevocable agreement to provide lifetime health care coverage at

GM's expense, and to read out of the plan the provisions wherein GM expressly reserved its right to change the plan. Such a reading is precluded by this circuit's holding in *Musto,* which teaches that "where the power to terminate such a welfare plan has been reserved, it may be exercised...." *Id.* at 907 (quoting *White Farm*, 788 F.2d at 1192 and 1193). *See also Moore*, 856 F.2d at 492, cited with approval in *Musto*, 861 F.2d at 908, n.6 (upholding employer's right to exercise modification clause notwithstanding employer's promise to provide "lifetime benefits at no cost to employees").

Because GM's general plan documents[8] unambiguously set forth GM's right to modify health care coverages, I find that these documents do not establish GM's agreement or "private design" to vest any particular level of health care benefits upon retirement.

Nevertheless, I do not foreclose the possibility that GM bilaterally contracted to provide vested benefits to early retirees. I make this finding because it appears that some early retirement agreements contain GM's promise to furnish early retirees with a particular level of health care coverage in exchange for the early retiree's promise to, *inter alia*, release GM from liability for certain causes of action. These early retirement agreements may

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[8] Plaintiffs argue that because the modification/termination warnings occur only in the summary booklets, and not in the "underlying plan documents" (*i.e.*, the pre-1985 contracts and certificates of insurance with various insurance companies), they are ineffective. Plaintiffs cannot have it both ways. If they intend to rely on the summary booklets as a source of the alleged promise to provide vested lifetime health care benefits at no cost to retirees, then they must also live with the modification/termination provisions contained in those booklets.

be enforceable under ERISA as independent bilateral contracts or as modifications of GM's health care benefit plan.

GM argues that ERISA preempts early retirees from stating such a claim, citing, *e.g.*, *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 44, 107 S. Ct. 1549, 1551, 95 L. Ed. 2d 39, 45-46 (1987); *Blau v. Del Monte Corp.*, 748 F.2d 1348, 1356 (9th Cir. 1984), *cert. denied*, 474 U.S. 865, 106 S. Ct. 183, 88 L. Ed. 2d 152 (1985); *Lee v. Prudential Insurance Co. of America*, 673 F. Supp. 998, 1002 (N.D.Cal. 1987). In contrast, plaintiffs contend that the early retirement agreements are enforceable bilateral contracts under ERISA, citing, *e.g.*, *Firestone Tire and Rubber Company v. Bruch*, 489 U.S. 101, 109 S. Ct. 948, 955 (1989) ("ERISA was enacted 'to promote the interests of employees and their beneficiaries in employee benefit plans,' and 'to protect contractually defined benefits'").

None of the cited cases addresses a situation where, as here, an employer allegedly agrees, apart from its regular plan, to provide a discrete group of employees with vested health care benefits in exchange for defined consideration. In the absence of controlling authority to the contrary, I will allow the early retirees to state such a claim in the circumstances of this case. Accordingly, GM's motion to dismiss Count IV of the complaint is DENIED insofar as that motion pertains to early retirees.

I also find that there are genuine issues of material fact as to (1) which "early retirement agreements" constitute bilateral contracts; (2) the terms of those contracts; and (3) whether the 1988 changes constitute a breach of those contracts. These factual issues preclude summary judgment for or against the early retirees as a class.

Accordingly, GM's motion for partial summary judgment is GRANTED as to general retirees but DENIED as to early retirees. Plaintiffs' motion for partial summary judgment is DENIED.

Finally, I GRANT GM's motion to dismiss Count III of the complaint inasmuch as the United States Court of Appeals for the Sixth Circuit has clearly held that "a company does not act in a fiduciary capacity when deciding to amend or terminate a welfare benefits plan," *see Adams v. Avondale industries, Inc.*, 905 F.2d 943, 947 (6th Cir. 1990) (quoting *Musto*, 861 F.2d at 911).

IT IS SO ORDERED.

/s/ John Feikens
John Feikens
United States District Judge

Dated: July 29, 1991

/s/
Deputy Clerk

LIST OF PETITIONERS PURSUANT TO RULE 14.1(b)

1. Robert D. SPRAGUE
2. Leonard P. MOELLER
3. M. Scott PRUYN
4. Robert J. UNKRICH
5. Kenneth H. ADAIR
6. Donald D. AGOSTINO
7. Oren R. ALGER
8. Marvin S. ALLEN
9. Jack M. AMIE
10. Alfred A. ANDERSON
11. Austin B. ANTHONY
12. Benjamin J. APONIK
13. Owen ARD
14. Joseph R. ARON
15. Edwin C. AULT, Jr.
16. Omer BAILEY
17. Clare W. BAIRD
18. Lewis E. BALLARD
19. Elizabeth R. BALY
20. Robert J. BENSON
21. Richard J. BERUBE
22. Robert H. BICKMEYER
23. Floyd C. BIGGS
24. Walter H. BOEMKER
25. Anthony S. BOLDIZAR
26. Russell B. BOONE
27. Harold J. BOURCIER
28. Victor J. BRISCOE

29. Raymond H. BROWNLIE
30. James T. BRUCE
31. Donald H. BUGGIA
32. Clinton W. BURNS
33. James R. CAGLE
34. Curtis T. CARLSON
35. Robert CHINNOCK
36. Samuel A. CLAPP
37. Jearild S. COLMAN, Jr.
38. William J. CONLEY
39. Murlyn D. CONOVER
40. Ronald L. CONROW
41. Ellis W. COOK, Jr.
42. Gordon P. COULMAN
43. Richard G. COURSEN
44. Breese E. DAME
45. Norman O. DAVIS
46. Arthur C. DeMARIA
47. Geraldine DOMBROWSKI
48. Francis B. DOONAN
49. Kenneth E. ENGLE
50. Otto D. ETHRIDGE
51. Shirley FAROH
52. Mae L. FELLOWS
53. John D. FITTRO
54. Gerald M. FLYNN
55. Mary G. FRANKLIN
56. Roy C. FREEMAN
57. Melvin E. FREY
58. John C. FUNK
59. Carl A. GABRIELSON
60. John F. GERALD
61. Howard F. GILLARD

62. Joseph A. GILLEN, Jr.,
63. John B. GINGELL
64. Robert L. GOODWIN
65. Earl T. GORDON
66. Carl W. GREENMAN
67. Carl G. GROANING
68. Paul J. GROSECLOS
69. Olan G. HAFLEY
70. William C. HARKINS
71. Florence HARNER
72. Chris L. HAWKINS
73. Richard C. HAYES
74. Bernard H. HENDRICKS
75. Prudie HOLBROOK
76. Leita M. HOLDAWAY
77. Ernest R. HOYT
78. Walter F. HUPPENBAUER
79. Harold L. KNICELY
80. Henry E. KNIGHT
81. Thomas A. KOLANDER
82. Leonard J. KOMASARA
83. Edwin T. KONIECZNY
84. Walter LAMPERT
85. Christoph J. LORENZ
86. Francis M. LUMLEY
87. Jerry McCONNELL
88. Edward MENDES
89. Loren D. MEYER
90. Hal C. MEYERS
91. Wilfred B. NEGRETE
92. Donald W. NESBIT
93. Henry E. NORTHAM
94. Helmut E. OBERGEFELL

95. Ottis F. OLINGER
96. Anthony G. PONCE
97. Junior F. REHOR
98. Joseph A. RENVEZ
99. James J. RODDY
100. Glyn W. SADLER
101. Joseph H. SALENTINE
102. John SCHEPPKE
103. Charles H. SMITH
104. Daniel G. SPENCER
105. Bernard C. STRIEBEL
106. Lowell G. STRIEGEL
107. Orvil E. SUMMERS
108. Henry J. THIJSSEN
109. Harold W. THOMAS
110. J.S. THOMAS
111. Mary Jane E. TIGNER
112. Dorothy J. WALTZ
113. William WASSON